

Application No.: 10/020,401

Docket No.: 21547-00287-US

**REMARKS**

Claims 11-19 remain pending in this application. Claims 11 and 16 are independent. Claims 11, 16, and 19 have been amended, and no claims have been added or canceled by this amendment.

**Indefiniteness Rejection**

Withdrawal of the rejection of claims 11-15 under 35 U.S.C. §112, second paragraph, as being indefinite, is requested. Independent claim 11 has been amended in a manner which is believed to overcome the stated basis for indefiniteness.

To further clarify the structure of the claimed invention, the implants are now recited in the preamble, and have been inferentially claimed in the body of the claim to make it clear that the claimed support element must be structurally arranged so as to be suitable for use with implants.

**Anticipation Rejection over Emmanuel (WO 94/15545)**

Withdrawal of the rejection of claims 11-15 under 35 U.S.C. §102(b) as being anticipated by Emmanuel (WO 94/15545) is requested.

Applicant notes that anticipation requires the disclosure, in a prior art reference, of each and every limitation as set forth in the claims.<sup>1</sup> There must be no difference between the claimed invention and reference disclosure for an anticipation rejection under 35 U.S.C. §102.<sup>2</sup> To properly anticipate a claim, the reference must teach every element of the claim.<sup>3</sup> "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference".<sup>4</sup> "The identical invention must be shown in as complete detail as is contained in the ...claim."<sup>5</sup> *In determining anticipation, no claim limitation may be ignored.*<sup>6</sup>

<sup>1</sup> *Titanium Metals Corp. v. Banner*, 227 USPQ 773 (Fed. Cir. 1985).

<sup>2</sup> *Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001 (Fed. Cir. 1991).

<sup>3</sup> See MPEP § 2131.

<sup>4</sup> *Verdegaal Bros. v. Union Oil Co. of Calif.*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

<sup>5</sup> *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

<sup>6</sup> *Pac-Tex, Inc. v. Amerace Corp.*, 14 USPQ2d 187 (Fed. Cir. 1990) (emphasis added).

Application No.: 10/020,401

Docket No.: 21547-00287-US

*Deficiencies of Emmanuel*

The applied art does not disclose an elongate support element suitable for use with implants and as a replacement structure for the human body, which recites that, among other features, "...the plural seats are arranged to prevent communication between the surface on the elongate support element and an opposing surface on the elongate support element through the plural seats," as recited in independent claim 11.

Referring to FIG. 2 of the present application, this limitation embodies the feature that the seats 22, 23 do not extend through the support element. In other words, the seats do not form through-holes, and do not allow communication between opposed surfaces of the support element.

The Examiner offers FIG. 4 of Emmanuel as disclosing "no communication between the surface on the elongate support element and an opposing surface of the element." Applicants respectfully traverse what appears to be a mischaracterization of the applied art.

Emmanuel's device, in contrast to the claimed invention, includes cylinder-shaped bores 56, which are open to the upper side of bridge 48, and which communicate with relatively narrow cylinder-shaped bores 58 which, in turn, open into dimples 50 via the flattened region 54.

Thus, as clearly seen in FIG. 4 of Emmanuel, the structure of Emmanuel includes through holes 58 which allow communication between the upper surface of bridge 48 and the lower surface of bridge 48, i.e., the surface which is directly adjacent to the patient's alveolar bone 60.

Figure 4 is an elevation view showing bridge 48 of FIG. 3 connected to the dental patient's alveolar bone 60 by screws 62 inserted through holes 56 and 58.

In particular, in FIG. 4 and the accompanying disclosure of Emmanuel, it can be seen that holes 58 in bridge 48 are required for screws 62 to be able to engage one-piece osseointegratable part 80, and thus secure bridge 48 to the patient's alveolar bone 60.

Without the holes or "communication" in Emmanuel, Applicants suggest that the device of Emmanuel would not represent an operable or functional device because bridge 48 could not be secured to the patient's alveolar bone 60.

Application No.: 10/020,401

Docket No.: 21547-00287-US

Therefore, Applicants submit that it is clear that Emmanuel has communication (i.e., a *required* opening) between the upper and lower surfaces of bridge 48, contrary to the explicitly claimed limitation in independent claim 11.

In addition, the Examiner states, without support, that "[p]atentable weight is not given to inferentially claimed components." Applicants respectfully traverse this unsupported contention.

As the Court of Claims and Patent Appeals (CCPA), the predecessor to the Federal Circuit held in *Wilson*, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art."<sup>7</sup> Also, the MPEP requires that "[a]ny terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation."<sup>8</sup> Applicants submit that the Examiner must therefore consider each word of the claim in assessing patentability against the applied art. It appears that the Examiner has failed to do so in setting forth the basis for this anticipation rejection.

Because Emmanuel fails to disclose all of the limitations recited in claim 11, as discussed above, Applicants respectfully request reconsideration and withdrawal of the anticipation rejection under 35 U.S.C. § 102(b).

#### **Anticipation Rejection over Willoughby (US 5,873,721)**

Withdrawal of the rejection of claims 11-15 under 35 U.S.C. §102(e) as being anticipated by Willoughby (US 5,873,721) is requested. The legal requirements for anticipation have been set forth above.

#### ***Deficiencies of Willoughby***

The applied art does not disclose an elongate support element suitable for use with implants and as a replacement structure for the human body, which recite, among other features, that "...the center axes of each of the plural seats are non-parallel with each other", as recited in independent claim 11, as amended.

<sup>7</sup> *In re Wilson*, 424 F.2d 1382 (C.C.P.A. 1970).

<sup>8</sup> See MPEP §2111.02; and see *Corning Glass works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989).

Application No.: 10/020,401

Docket No.: 21547-00287-US

In addition, the applied art does not disclose a method for producing and installing a tooth replacement structure which includes, among other features, "...applying tooth replacement material to the support part, wherein center axes of each of the two or more recesses are non-parallel with each other", as recited in independent claim 16, as amended.

Willoughby clearly does not disclose use of non-parallel implant axes or recesses.

Since the applied art does not disclose all the recited limitations, withdrawal of the rejections and allowance of independent claims 11 and 16, and dependent claims 12-15 and 17-19, depending therefrom, are requested.

### Conclusion

In view of the above amendment, applicant believes that each of pending claims 11-19 in this application is in immediate condition for allowance.

For any fees that are due, including fees for extensions of time, please charge CBLH Deposit Account No. 22-0185, under Order No. 21547-00287-US from which the undersigned is authorized to draw.

Respectfully submitted,

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**FEE SUMMARY SHEET****Petition for Extension of Time Under 37 CFR 1.136(a) (PTO SB-22)**

Date: 5/12/05  
Time:  
Docket: 21547-00287-US

Filing Date: December 18, 2001  
Application No: 10/020,401  
Total Fee: \$ 450.00

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Code	Amount	37 CFR	Fee Description	Listed on
1252	450.00	1.17(a)(2)	Extension for response within second month	Petition for Extension of Time Under 37 CFR 1.136(a) (PTO SB-22)